IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

MFA.No. 1044 of 2002()

OA.66, 67 & 70 of 1981 of FOREST TRIBUNAL, MANJERI
OA.133, 134 & 135 of 1990 OF FOREST TRIBUNAL, PALAKKAD
OA.18, 19 & 20 of 2001 of FOREST TRIBUNAL, KOZHIKODE

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APPELLANTS/APPLICANTS:
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1. KOLLAPARAMBAN MUHAMMED
S/O. AHAMMED KUTTY, KARAKUNNU AMSOM DESOM,
P.O.KARAKUNNU, ERNAD TALUK, MALAPPURAM DISTRICT
(APPLICANT IN O.A.18/2001)

2. NELLIPARAMBAN VEERAN,
S/O. MUHAMMED, KARAKUNNU AMSOM DESOM,
P.O.KARAKUNNU, ERNAD TALUK, MALAPPURAM DISTRICT
(APPLICANT IN O.A.19/2001)

3. NELLIPARAMBAN UMMER,S/O.AHAMMED,KARAKUNU
AMSOM DESOM,PO.KAMKUNNU,ERNAD TALUK,
MALAPPURAM DT.
(APPLNT.IN OA.20/2001)

THE 1 & 2 APPLICANTS ARE
REP.BY THEIR POWER OF ATTORNEY HOLDER,MOIDEEN HAJI
S/O.ALAVI HAJI, KOLLAMPARAMBIL (H), KARAKKUNNU,
ERNAD TALUK, MALAPPURAM DISTRICT.

BY ADV. SMT.AYSHA YOUSEFF
SRI.P.A.AZIZ
SRI.JIKKU GEORGE JACOB

RESPONDENTS/RESPONDENTS:
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1. THE STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, TRIVANDRUM.

2. THE CUSTODIAN OF VESTED FORESTS, KOZHIKODE.

BY SPL.GOVT.PLEADER SRI.M.P.PRAKASH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 26/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.1044 OF 2002

Dated 26th November, 2007

JUDGMENT

Koshy,J.

Appellants in these cases filed O.A.Nos.133, 134 and 135 of 1990 urging that the following extent of land are not private forest, but the forest officials are interfering with their possession:

Extent:

O.A.133/90 : 11.40 acres (4.5 Hectares)

O.A.134/90 : 8.35 acres (3.6 Hectares)

O.A.135/90 : 4.65 acres (2 Hectares)

According to the appellants, purchase certificates were issued in their favour by the Land Tribunal and these properties were taken on an oral lease from Nilambur Kovilakam from 1946 onwards. They were cultivating the land with paddy and thereafter it was developed and banana plants and tapioca were cultivated. According to the respondents, this is part of private forest held by the Kovilakam and they are not developed lands when the Kerala Private Forests (Vesting and Assignment) Act (hereinafter referred to as `the Act') came into force. Therefore, the land is automatically vested with the State under section 3 (1) of the Act. The area involved in this case is lying contiguously as

part and parcel of a compact block of 10002.12 Hectors of VF land in R.S.1305 of Chungathara village, locally known as Nilambur Kovilakam forests, to which the MPPF Act applied immediately before the appointed day and got vested in the Government on 10.5.71 (appointed day) as per the provisions of Act 1971. The area was therefore surveyed and demarcated as vested forests during 1976. A notification as required under rule 2A of the Kerala Private Forests (Vesting and Assignment) Rules, 1974 was published and the details of the private forest so vested in the Government were specified as item NO.2,39,17/13 and 17/15 in the list of private forests attached to the notification. With regard to the purchase certificates, appeals were filed before the appellate authority. The appellate authority though dismissed the appeals, observed that the decision is subject to the decision of the Forest Tribunal as the question whether it was a forest or not has to be decided by the Forest Tribunal. Even otherwise, the question whether a particular place is forest or not has to be decided by the Forest Tribunal. A commission was appointed. The Commissioner was not able to find out any evidence of cultivation except few arecanut trees etc. But, it was found that three sides of the disputed property are thick forests.

2. The applications filed by the appellants were originally numbered as O.A.Nos.66, 67 and 70 of 1981. Those applications were

allowed by the Forest Tribunal. State filed appeal and case was remanded by this court. After remand, the cases were renumbered as O.A.Nos.18, 19 and 20 of 2001. Forest Tribunal after considering the evidence dismissed the applications. This court by judgment dated 16/1/2001 in M.F.A.No.998/90 remanded the matter for definite finding whether the area is covered under the Madras Preservation of Private Forests Act. If the area is covered under the Madras Preservation of Private Forests Act, automatically it is a private forest vested in the Government under section 3(1) of the Act. Then, It is the burden of the appellants to prove that they are entitled to the benefit under section 3(2) or 3(3) of the Act. After remand, the Tribunal considered the evidence in detail and by the impugned order found that the area in question is covered under the M.P.P.F. Act. Tribunal noticed that the applicant in O.A.No.18/2001 stated that all the three sides were thick forests. Thereafter, at paragraph 36 it was found as follows:

> "36. From Ext.A1, A6 and A10 Ext.C2, the oral evidence discussed above the conclusion that flows is that the property involved in these cases were part of a private forest which extended more than 100 acres, even though it was not measured. That shows that the property was governed by the repealed M.P.P.F. Act."

With regard to the Commissioner's report also the Tribunal found as

follows:

> "There is another aspect also. The commissioner report shows that the properties on the three sides of the scheduled property are private forests. The commissioner walked through 0.75 kms through the forest to reach the property. That much distance shows that the property is part of a forest which extended more than 100 acres. This is more so when other three sides through which the commissioner did not walk is also forest."

Then, with regard to the revenue inspectors report (Ext.A1) relied on by the applicants which was in 1979, the revenue inspector pointed out that the said property was cleared up for cultivation, but, a few number of trees and free stumps were seen as Irul, Maruthu etc. were seen. At the time of inspection banana and tapioca were seen cultivated in the applicants' land. No substantial improvements were seen on this land at present except the workers shed. So, it was not cultivated with paddy. Ext.A1 report of the revenue inspector shows that in 1979 some banana and tapioca were seen cultivated. That is against the claim in the application as at that time it was cultivated with paddy. Further, even if banana and tapioca were seen in 1979, it cannot say whether there was any cultivation when the Act came into force in 1974. For cultivating and developing lands covered under M.P.P.F. Act, permission from the Government/Collector was necessary. Appellants did not produce any such evidence. With

regard to the purchase certificates, findings are mentioned in paragraph 64 of the order of the Tribunal. We agree with the above findings and we are not reiterating the same. Appellants were not able to produce any prior report or title deeds. The Tribunal also found on the basis of commission report that the land in question was not under personal cultivation. In the above circumstances, finding of the Tribunal that the land in question was covered under the M.P.P.F Act and it was a private forest vested in the Government cannot be interfered. The commission report and other evidence also show that applicants are not entitled to the benefit under section 3(2) or 3(3) of the Act and the burden of the appellants was not discharged. We see no ground to interfere with the order passed by the Tribunal.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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